

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of the
Family Child Care License of Cindi A. Rinn

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell (ALJ) on May 14, 2013, at the Olmsted County Government Center, 151 Fourth Street SE, Rochester, Minnesota 55904. The OAH record closed at the end of the hearing on May 14, 2013.

Geoffrey A. Hjerleid, Senior Assistant Olmsted County Attorney, Rochester, Minnesota, appeared on behalf of the Department of Human Services (Department). Cindi A. Rinn, Licensee, appeared on her own behalf, without legal counsel.

STATEMENT OF THE ISSUES

1. Did Licensee fail to comply with the terms of an Order for Conditional License?
2. If Licensee failed to comply with the terms of an Order for Conditional License, did the nature, chronicity, or severity of the violation(s) support revocation of Licensee's family child care license?

SUMMARY OF CONCLUSION

The ALJ finds that Licensee failed to comply with some of the terms of the Conditional License in a timely fashion. The ALJ further finds that the Licensee had materially complied with all of the terms of the Conditional License by the date of the hearing. The ALJ concludes that the nature of and lack of severity of the violations do not merit revocation of Licensee's family child care license.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Background and Program Conditions

1. Licensee has been providing family child care for over 31 years. She is currently operating under a class C2-Group Family Child Care license that expires on

September 1, 2013. Because of this proceeding, the current license is a Temporary Provisional License. The C2 license permits Licensee to care for a maximum of 12 children without a second adult caregiver. Of those 12 children, no more than 10 may be under school age. Of the under school age children, no more than two may be infants and/or toddlers. Of the two in the toddler/infant category, no more than one may be an infant.¹

2. Licensee currently cares for six children from four families. Three of those children are her grandchildren. The parent of one of the other three children is an individual that had been cared for by Licensee when she was a child.²

Relevant Licensing History

3. In 1992, and in each year from 2004 through 2009, Licensee signed a County Family Day Care Provider's Agreement, wherein Licensee agreed, in relevant part:

- To follow all the provisions of the Minnesota Department of Human Services' Family Day Care and Group Family Day Care Standards, and to cooperate with the Olmsted County Department of Social Services in providing quality care in my home (9502.0300-9502.445).
- That the primary care provider, substitutes and helpers will participate in all required training and will complete Child Passenger Restraint training prior to transporting day care children under the age of nine. (9502.0375 Subp. 3 & 5);
- To complete and have accessible the following forms per child: admissions and arrangements for, immunization records, and emergency medical form authorization, and permission to administer checklist. (9502.0405 Subp. 4).³

4. As a result of the August 1995 relicensing visit, Licensee was issued a Correction Order for the following relevant licensing deficiencies:

- Lack of current immunization record for one child (corrected on 10/01/95);
- Incomplete on six hours of training.⁴

5. As a result of the August 1996 relicensing visit, Licensee was issued a Correction Order for the following relevant licensing deficiencies:

¹ Testimony of Cindi Rinn; Ex. 67.

² Test. of C. Rinn; Ex. 68.

³ Exs. 1, 31, 34, 37, 42, 46, 49, 57. Some specific language changes occurred in these agreements over time as new licensing regulations were added, such as the child passenger restraint training requirement and permission to administer medicine form requirement.

⁴ Ex. 13.

- Fire extinguisher tag not current (corrected on 09/03/96);
- Training Certificate not sent in to County (corrected on 09/03/96).⁵

6. As a result of the August 1997 relicensing visit, Licensee was issued a Correction Order for the following relevant licensing deficiencies:

- Incomplete on six hours of training;
- Lack of current immunization records for three children (corrected on 09/08/97).⁶

7. As a result of the August 1998 relicensing visit, Licensee was issued a Correction Order for the following relevant licensing deficiencies:

- Incomplete on six hours of training (completed and corrected 10/27/98);
- Lack of current immunization records for five children (corrected on 09/19/98).⁷

8. As a result of the August 1999 relicensing visit, Licensee was issued a Correction Order for the following relevant licensing deficiencies:

- Incomplete on six hours of training (completed and corrected 10/30/99);
- Lack of current immunization records for four children (corrected on 09/01/99);
- Lack of admissions and arrangement forms for two siblings (corrected on 08/26/1999).⁸

9. As a result of the August 2001 relicensing visit, Licensee was issued a Correction Order for the following relevant licensing deficiencies:

- Incomplete on six hours of training;
- Lack of "up to date forms" for three children;
- Fire extinguisher tag not current.⁹

10. As a result of the August 2002 relicensing visit, Licensee was issued a Correction Order for the following relevant licensing deficiencies:

- Lack of current immunization records for three children (corrected on 09/03/02).¹⁰

⁵ Ex. 16.

⁶ Ex. 17.

⁷ Ex. 19.

⁸ Ex. 22.

⁹ Ex. 26.

¹⁰ Ex. 27.

11. As a result of the August 2003 relicensing visit, Licensee was issued a Correction Order for the following relevant licensing deficiencies:

- Incomplete on six hours of training (corrected on 01/26/04);
- Fire extinguisher tag not current (corrected on 10/13/03).¹¹

12. As a result of the August 2004 relicensing visit, Licensee was issued a Correction Order for the following relevant licensing deficiencies:

- Incomplete on six hours of training (completed and corrected 08/30/04);
- Lack of current immunization records for two children (corrected on 08/17/04);
- Lack of emergency authorization and abuse reporting forms for one child (corrected on 08/17/04).¹²

13. As a result of the August 2005 relicensing visit, Licensee was issued a Correction Order for the following relevant licensing deficiencies:

- Fire extinguisher tag not current (corrected on 09/20/05);
- Lack of current immunization records for three children (corrected on 09/16/05).
- Lack of an updated rabies shot for a cat (corrected 09/19/05).¹³

14. As a result of the August 2006 relicensing visit, Licensee was issued a Correction Order for the following relevant licensing deficiencies:

- Incomplete on six hours of annual training (corrected on 09/29/06);
- Lack of proof of CPR training (corrected on 09/29/06);
- Lack of proof of Shaken Baby training (corrected on 08/22/06).¹⁴

15. As a result of the September 2007 relicensing visit, Licensee was issued a Correction Order for the following relevant licensing deficiencies:

- Incomplete on eight hours of training (corrected 10/27/07);
- Fire extinguisher tag not current (corrected 09/14/07);
- Lack of current immunization record for one child (corrected 09/17/07);
- Lack of emergency authorization forms for two children (corrected 09/14/07).¹⁵

¹¹ Ex. 29.

¹² Ex. 32.

¹³ Ex. 35.

¹⁴ Ex. 38.

¹⁵ Ex. 44.

16. On October 27, 2008, two County licensing workers completed Licensee's annual relicensing visit. The relevant portion of the report states:

The house was clean. The overall condition of the physical environment was good and in repair. All exits were accessible, smoke detectors functioning and the fire extinguisher was filled and inspected. The provider has not completed her training hours for the year. She states that she will complete a Care Course at home. The paper work was in good order and complete. She is in compliance with the number of children present. The criminal history background check has been completed for the provider and her substitutes. Her pets' immunizations are up to date. She has completed SIDS training and she has also watched the Shaken Baby video. Her CPR training is current within the past 3 years. The crib inspection form has been completed as well as the fire and storm drill log. No smoking is permitted in the day care home at any time.¹⁶

17. As a result of the August 2009 relicensing visit, Licensee was issued a Correction Order for the following relevant licensing deficiencies:

- Incomplete on seven hours of training;
- Fire extinguisher tag not current;
- Lack of current immunization record for one child;
- Lack of signed abuse forms for two children;
- Lack of emergency authorization form for one child.¹⁷

As of December 29, 2009, the County had not received the signed and returned Correction Order of August 2009, to indicate when the deficiencies had been corrected.¹⁸

18. As a result of the August 2011 relicensing visit, Licensee was issued a Correction Order on October 7, 2011, for the following relevant licensing deficiencies:

- "Missing forms for children" (corrected 09/23/11);
- Incomplete on two hours of training;
- No fire extinguisher (corrected 10/10/11).¹⁹

The fire extinguisher had been taken in by Licensee's husband, charged and tagged, but had not been returned to the kitchen because the husband forgot to bring it in from his truck before he went to work on the day of the relicensing visit.²⁰

19. On October 10, 2011, the County recommended to the Department that Licensee be placed on a Conditional License because:

¹⁶ Ex. 61.

¹⁷ Exs. 51, 52.

¹⁸ Ex. 55.

¹⁹ Ex. 60.

²⁰ Test. of Kenneth Rinn.

- Since 1994, 11 of 17 Correction Orders issued to Licensee included citations “for not having the proper forms completed for each child in care.”
- Insufficient in-service training hours for 1994 (CPR and First Aid), 1995 (six hours), 1997 (six hours); 1998 (six hours), 1998 (six hours), 1999 (six hours), 2000 & 2001 (six hours), 2003 (six hours), 2004 (six hours), 2006 (CPR and First Aid), 2007 (eight hours), 2008 (eight hours), 2009 (eight hours), 2011 (eight hours).
- Fire extinguisher not tagged for 1994, 1996, 2000, 2001, 2003, 2005, 2007, and 2011. At the 2011 licensing visit, the fire extinguisher was not in the home.²¹

The Licensors recommended that Licensee be required to: show proof of 16 hours of training within 60 days; complete Admission and Arrangement packets within one week; immediately have a working, tagged fire extinguisher; and sign the August 23, 2011 Correction order by October 31, 2011.²²

20. On August 16, 2012, the Department issued Licensee an Amended²³ Order to Pay a Fine of \$200.00, and Order of Conditional License. The reason for the Order to Pay a Fine was Licensee’s failure to provide documentation of annual training hours at the times of her relicensing visits by the County on August 4, 2006; September 7, 2007; August 27, 2008; August 19, 2009; and August 23, 2011.²⁴

The reasons for the Order of Conditional License included the annual training violations cited above, together with Licensee’s failures to: have completed admission and arrangements forms for two children in 2007; immunization records for one child in 2007 and three children in 2005; maintain a fire extinguisher in 2007 and 2005; and have rabies shot and tag documentation in 2005 for a cat.²⁵

The terms of the Conditional License were:

1. You follow and comply with all applicable Minnesota rules and laws.
2. No variances to age distribution or capacity will be granted during the conditional period.
3. You must provide Olmsted County Community Services with documentation showing that you have completed sixteen hours of outstanding training requirements by **October 1, 2012**.

²¹ Ex. 61.

²² *Id.*

²³ Ex. 63; which orders all copies of a July 5, 2012 Order to be destroyed.

²⁴ *Id.*

²⁵ *Id.*

4. You must develop and comply with a detailed written plan describing how you will complete and document each specific family child care training requirement in a timely manner on an on-going basis. You must submit this plan to Olmsted County Community Services **by August 30, 2012**. The plan must be approved by Olmsted County Community Services.
5. You must complete six hours of additional training **by November 8, 2012**. The training is in addition to the annual training requirements listed in Minnesota Statutes, section 245A.50. The training must be in the area of child health and safety. You must obtain approval of the training prior to attendance and you must submit documentation of your attendance to Olmsted County Community Services.
6. You must either provide a copy of the Order of Conditional License to parents of children in care or document that all parents have been given an opportunity to review the Order of Conditional License. You must obtain parent signatures of each currently enrolled child, indicating they have either received a copy of the conditional order or had an opportunity to review the conditional order. You must provide this documentation to Olmsted County Community Services **by August 30, 2012**. For new families, you must submit documentation of compliance with this term to Olmsted County Community Services **within 5 days of any child's admission** to your child care program.²⁶

21. The parents of all current day care children signed the acknowledgements on August 16, 2012, that they had read the Conditional License.²⁷ Licensee promptly paid the \$200.00 fine.²⁸

22. Licensee did not read the terms of the Conditional License carefully, having been distracted because the level of activity in her home caused by her adult children and their families having recently moved back to Minnesota from California.²⁹

23. Licensee did not provide the County with the documentation of either a written plan or the required training by the deadlines of conditions three, four, or five of the August 16, 2012, Order for Conditional License.³⁰

²⁶ *Id.*

²⁷ Test. of Kenneth Rinn.

²⁸ Test. of C. Rinn.

²⁹ *Id.*

³⁰ Test. of Tammy Schettel, County Senior Case Aide and family child care re-licensor.

24. The County did not communicate with Licensee or return to the day care home after the issuance of the August 16, 2012, Order to Pay a Fine and Order of Conditional License.³¹

25. Keeping current on training is essential to protect the health, safety and welfare of day care children. Safety standards have changed and expanded over the years because of new research and information. Licensees must remain current on their training to be knowledgeable about the latest laws, regulations, research and best practices.³²

26. By the time of the hearing on March 4, 2013, Licensee had taken 30 hours of required training and provided the County with the Certificates that document the training for three of five courses, representing 14 hours.³³ At the hearing, Licensee promised to send in the Certificates for the two most recent courses, representing 16 hours of training.³⁴ The County acknowledged at the hearing that Licensee is now current on all required training.³⁵

Procedural Findings

27. On October 3, 2012, the County sent the Department a letter recommending that the family child care license of Licensee be revoked because of her failure to provide documentation of the training required by the August 16, 2012, Order to Pay a Fine and Order of Conditional License, as well as failure to provide the signatures of the parents of all day care children, acknowledging that they had knowledge of the Order of Conditional License.³⁶

28. On December 27, 2012, the Department issued its Order of Revocation of Licensees' family child care license. The Order of Revocation is based upon the following allegations:

- Licensee's failure to comply with the August 16, 2012, Order of Conditional License;
- Repeated failure to maintain a fire extinguisher in the home; and
- Repeated failure to have admission and arrangements forms and immunization records for children in care.³⁷

29. Licensee filed a timely appeal of the Order of Revocation and requested a hearing. In the appeal letter, she admitted to tardiness on training requirements and provided assurances that it would never happen again.³⁸

³¹ *Id.*

³² Test. of Brian Satzke, County Licenser and Case Manager.

³³ *Id.*; Test. of B. Satzke, K. Rinn, and T. Schettel; Ex. B.

³⁴ Test. of C. Rinn.

³⁵ Test. of B. Satzke, T. Schettel; Ex. B.

³⁶ Ex. 65.

³⁷ Ex. 66.

³⁸ Ex. 68.

30. On February 1, 2013, the Department filed a Notice of and Order for Pre-Hearing Conference and Hearing (Notice) in this matter, and this contested case proceeding ensued. The Notice alleged that it contained Exhibits A, B, and C, incorporating them by reference. However, the Notice contained only Exhibits A and B. The Notice did not contain an Exhibit C, alleged to be “the previous Order of Conditional License.”³⁹

31. At the request of the Department, on February 1, 2013, an Administrative Law Judge issued a Protective Order, which was served upon the parties by mail.⁴⁰

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

Jurisdiction and Authority

1. The ALJ and the Commissioner of Human Services are authorized to consider the appeal of revocation of family child care license decisions, pursuant to Minn. Stat. §§ 14.50, 245A.07, subd. 3(a), and 245A. 08, subd. 1.⁴¹

2. An Administrative Law Judge is required to be especially careful to insure fairness to all persons bring grievances before him and ensure that one side is not treated unfairly.⁴²

3. Minn. Stat. § 14.58 requires that all issues be fully stated in the Notice of Hearing. Minn. R. 1400.5600, subp. D, requires that the notice of and order for hearing contain a citation statement of the allegations or issues to be determined together with a citation to the relevant statutes or rules allegedly violated.

4. Minn. Stat. § 245A.07, subd. 3, allows the Commissioner to suspend or revoke a license, or impose a fine if a license holder fails to comply with the applicable laws or rules. Notice of any such action must be given by certified mail and must state the reasons for the sanction.

5. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled to the extent they are contained in the Notice and Order for Hearing.⁴³

³⁹ Notice of and Order for Pre-Hearing Conference and Hearing.

⁴⁰ Protective Order.

⁴¹ Minnesota Statutes are cited to the 2012 edition unless otherwise noted. Minnesota Rules are cited to the 2011 edition unless otherwise noted.

⁴² *Plowman v. Copeland, Buhl & Co., Ltd.*, 261 N.W.2nd 581, 584 (Minn. 1977).

⁴³ The allegations contained in the Order of Revocation and the Order of Conditional License were incorporated into the Notice of Pre-Hearing Conference and Order for Hearing. The issues in this proceeding are, therefore, limited to those allegations.

6. Evidence offered and/or accepted into the record that does not directly relate to the allegations contained in the Notice and Order for Hearing are not appropriate to be considered by the Administrative Law Judge in determining whether the Order for Revocation should be upheld. Therefore, the ALJ has considered neither the testimony nor the documentary evidence that does not relate to the three allegations contained in the Notice and Order for Pre-Hearing Conference and Hearing.⁴⁴

Burden of Proof

7. Under Minn. Stat. § 245A.08, subd. 3, the burden of proof first lies with the Department, which may demonstrate reasonable cause for the action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the Department demonstrates that reasonable cause existed, the burden shifts to the license holder to demonstrate by a preponderance of the evidence that she was in full compliance with those laws or rules allegedly violated at the time that the Department alleges the violations occurred.

Alleged Violations of Law or Rule

8. Minn. R. 9502.0385, subp. 4 (2005), regarding **Day Care Training**, required all licensees, other adult caregivers, and helpers receive certain initial training, followed by six hours of annual and other periodic training requirements in various topics, including: child growth and development, first aid, CPR, SIDS and Shaken Baby Syndrome (SBS) training.⁴⁵

9. Minn. Stat. § 245A.50, regarding **Family Child Care Training Requirements**, requires that all licensees, other adult caregivers, and helpers, receive certain initial training, followed by eight hours of annual and other periodic training requirements in various topics, including: child growth and development, first aid, CPR, SIDS and SBS training, and child passenger restraint systems.⁴⁶

10. Minn. R. 9502.0405, subp. 4, provides in relevant part:

Subp. 4. Records for each child. The provider shall obtain the information required by items A to C from parents prior to admission of a child. The provider shall keep this information up-to-date and on file for each child.

⁴⁴ Finding 30. The following exhibits were given no evidentiary weight because they are either irrelevant to the issues in this proceeding or are repetitious: Exs. 2-12, 14, 15, 18, 20, 21, 23-25, 28, 33, 36, 39-41, 43, 45, 47, 48, 50, 53, 54, 56, 58, 59, 62. See, Minn. Stat. § 14.60 and Minn. R. 1400.7300, subp. 1.

⁴⁵ The rule was repealed by Laws 2007, Chapter 112, Section 59, and was replaced with the current provisions of Minn. Stat. § 245A.50.

⁴⁶ *Id.*

A. The signed and completed admission and arrangements form of the department must be on file in the provider's home and contain the following information:

- (1) Name and birthdate of the child.
- (2) Full name of parents.
- (3) Home address, work address, and telephone numbers where parents may be reached.
- (4) Name, address, and telephone number of physician, dentist, and hospital to be used for emergencies when parents cannot be reached.
- (5) Name, address, and telephone number of persons to be notified in case of emergency, when parents cannot be reached.
- (6) Names of all persons authorized to remove the child from the residence.
- (7) Enrollment dates.
- (8) Financial arrangements.
- (9) Insurance notification specified in part 9502.0355, subpart 4.

...

C. Immunization records must be kept in accordance with Minnesota Statutes, section 121A.15. The provider shall request, update, and keep on file the dates of immunizations received by a child in regular attendance at the residence as follows:

- (1) for an infant, every six months;
- (2) for a toddler, annually;
- (3) for a preschool child, every 18 months; and
- (4) for a school-age child, every three years.

11. Minn. R. 9502.0425, regarding **Physical Environment** provides in relevant part:

...

Subp. 16. Extinguishers. A portable, operational, multipurpose, dry chemical fire extinguisher with a minimum 2 A 10 BC rating must be maintained in the kitchen and cooking areas of the residence at all times. All caregivers shall know how to use the fire extinguisher. . . .

12. Minn. Stat. § 245A.06, regarding **Correction Order and Conditional License**, provides in relevant part:

Subd. 3. **Failure to comply.** If the commissioner finds that the applicant or license holder has not corrected the violations specified in the correction order or conditional license, the commissioner may impose a fine and order other licensing sanctions pursuant to section 245A.07.

Violations Found

13. The Commissioner has advanced evidence establishing reasonable cause to believe that the Licensee failed in August 1994, August 1995, August 1997, August 1998, August 1999, August 2000, August 2001, August 2003, August 2004, and August 2006, to obtain and document training required by Minn. R. 9502.0385. Accordingly, the burden shifted to the Licensee to demonstrate by a preponderance of the evidence that she was in full compliance with this rule provision. The Licensee did not demonstrate by a preponderance of the evidence that she was in full compliance with Minn. R. 9502.0385, on the dates in question.

14. The Commissioner has advanced evidence establishing reasonable cause to believe that the Licensee failed in August 2007, August 2008, August 2009, August 2011, and August 2012 to obtain and document training required by Minn. Stat. § 245A.50.⁴⁷ Accordingly, the burden shifted to the Licensee to demonstrate by a preponderance of the evidence that she was in full compliance with this statutory provision. The Licensee did not demonstrate by a preponderance of the evidence that she was in full compliance with Minn. Stat. § 245A.50, on the dates in question.

15. The Commissioner has advanced evidence establishing reasonable cause to believe that the Licensee failed, in August 2005, September 2007, August 2009, and August 2012, to obtain and keep up to date and on file for each child the information required by Minn. R. 9502.0405, subp. 4. Accordingly, the burden shifted to the Licensee to demonstrate by a preponderance of the evidence that she was in full compliance with this rule provision. The Licensee did not demonstrate by a preponderance of the evidence that she was in full compliance with Minn. R. 9502.0405, subp. 4, on the dates in question.

16. The Commissioner has advanced evidence establishing reasonable cause to believe that the Licensee failed, in August 2005, September 2007, and August 2011,⁴⁸ to maintain a fire extinguisher as required by Minn. R. 9502.0425, subp. 16. Accordingly, the burden shifted to the Licensee to demonstrate by a preponderance of the evidence that she was in full compliance with this rule provision. The Licensee did not demonstrate by a preponderance of the evidence that she was in full compliance with Minn. R. 9502.0425, subp. 16. on the dates in question.

17. The Commissioner has advanced evidence establishing reasonable cause to believe that the Licensee failed in August 2005, to maintain a current rabies shot on

⁴⁷ Although the Correction Orders for these years incorrectly cited the repealed Minn. R. 9502.0385 rather than the new statutory provision, Minn. Stat. § 245A.50, the new statute contained substantially the same training requirements as those of the repealed Rule. The only relevant difference is that the annual training hours increased from six to eight. The Correction Orders adequately put Licensee on notice that she was out of compliance with training requirement.

⁴⁸ Only these three dates were cited in the Order for Conditional License with regard to the fire extinguisher violations. However, additional chronicity regarding the fire extinguisher issue is further established by Licensee's citations in 1996, 2001, and 2003. See, Findings 5, 9, and 11.

her cat as required by Minn. R. 9502.0435, subp. 12. Accordingly, the burden shifted to the Licensee to demonstrate by a preponderance of the evidence that she was in full compliance with this rule provision. The Licensee did not demonstrate by a preponderance of the evidence that she was in full compliance with Minn. R. 9502.0435, subp. 12, on the date in question.

18. The Commissioner has advanced evidence establishing reasonable cause to believe that the Licensee failed, in August 2012, September 2012, October 2012, and November 2012, to comply with conditions three, four, five and six of the August 16, 2012, Order for Conditional License as required by Minn. Stat. § 245A.06. Accordingly, the burden shifted to the Licensee to demonstrate by a preponderance of the evidence that she was in full compliance with this statutory provision. The Licensee did not demonstrate by a preponderance of the evidence that she was in full compliance with Minn. Stat. § 245A.06, on the dates in question.

Appropriate Sanction

19. Although the Licensee's violations may properly result in the imposition of sanctions against her license, it is recommended, for the reasons discussed in the Memorandum below, that license revocation not be imposed.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions and the underlying Findings, the Administrative Law Judge recommends that the Order of Revocation be **RESCINDED**.

Dated: June 20, 2013

s/M. Kevin Snell

M. KEVIN SNELL

Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Debra Schumacher, Administrative Law Attorney, PO Box 64941, St. Paul MN 55164, (651) 431-4319 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The statute governing family child care licensure requires that the “nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program” be considered when applying sanctions.⁴⁹ It is evident, and the Licensee freely acknowledges, that she has been chronically late in completing her annual training requirements, as well as tardy in maintaining current immunization and other required records. Although the Licensee’s failure to fully comply with these requirements would provide a basis for revocation of her day care license, the Administrative Law Judge respectfully urges the Commissioner to consider the imposition of a sanction less severe than revocation under the particular circumstances of this case, such as suspension for a period of time combined with a probationary period conditioned upon compliance with the rules and statutes. This recommendation is made because the nature of the violations that occurred are not of sufficient severity to warrant revocation.

The main grounds raised by the Department and County as warranting revocation has to do with the Licensee’s chronic failure to: acquire required training, maintain a fire extinguisher; and maintain all required records and permission forms on children. However, with the exception of the most recent correction order, Licensee has

⁴⁹ Minn. Stat. § 245A.07, subd. 1.

routinely acquired all required training promptly after receiving the correction orders. She has also promptly secured all forms and paperwork regarding day care children before the deadlines set forth in those correction orders.

The Order to Pay a Fine and Order of Conditional License suggests that the Department considers the \$200.00 fine an adequate sanction for all training violations for 2011 and before.⁵⁰

Appropriate Sanction

The Department argues that, since paying the fine and imposition of the conditional license did not prompt Licensee to develop a training plan, acquire the required 2012 training, and provide the County with appropriate documentation before the stated deadlines, there is no remedy available short of revocation that will cause Licensee to acquire required annual training in a timely fashion in the future. The facts supporting this argument are present, but the conclusion is incorrect. It overlooks the available sanction of suspension, which is one of the sanctions available to the Commissioner.

By the time of the hearing, Licensee had acquired all requisite training. The testimony and other evidence of Licensee that she has learned her lesson and will never be tardy in documenting her training are credible. The ALJ believes that the Order of Revocation and this proceeding has finally gotten Licensee's attention. However, Licensee's chronic failure to comply with the rules regarding training and records on children cannot be excused. Strict compliance with these and other provisions of the day care licensing rule should be required.

Suspension is the most severe sanction available, short of revocation. The ALJ respectfully suggests to the Commissioner that its use would be reasonable in this case. One necessary condition for lifting the suspension should be the requirement that Licensee submit an appropriate plan to show how she will maintain all required records on children and keep current on all training requirements.

Conclusion

Compliance with all of these rule provisions is important to ensure the health and safety of day care children. License holders must be prepared for emergencies at all times, whether the emergency entails a kitchen fire, knowledge of emerging and improved safety procedures that are acquired through the mandatory training requirements of the law, or information on emergency contacts for the children. The nature of Licensee's rule violations, while chronic, do not bear the severity necessary to warrant the revocation of the Licensee's day care license at this time.

M. K. S.

⁵⁰ Finding 20.